

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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RANDY WILLIAMS,

Petitioner,

-v.-

9:03-CV-568  
(LEK/RFT)

GEORGE DUNCAN, Warden,

Respondent.  
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**APPEARANCES:**

**OF COUNSEL:**

RANDY WILLIAMS  
Petitioner, *pro se*  
01-B-0247

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Syracuse, NY 13204

MARIA MORAN, ESQ.

LAWRENCE E. KAHN, U.S. DISTRICT JUDGE

**ORDER**

Randy Williams ("Williams" or "Petitioner") filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on May 8, 2003, which was dismissed by Order of this Court on July 27, 2007. Dkt. No. 1; Dkt. No. 67 ("July Order"). Williams has filed a notice of appeal. Dkt. No. 70. Presently before the Court are Petitioner's Motions seeking a certificate of appealability, leave to proceed *in forma pauperis* on appeal, and appointment of counsel. Dkt. Nos. 71-73. Respondent has opposed the request for a certificate of appealability. Dkt. No. 75

**I. Certificate of Appealability.**

28 U.S.C. § 2253(c)(1) provides in relevant part:

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –  
(A) the final order in a habeas corpus proceeding in which the detention

complained of arises out of process issued by a State court; or  
(B) the final order in a proceeding under section 2255.

However, a COA may only be issued “if the applicant has made a substantial showing of the denial of a constitutional right.” See 28 U.S.C. § 2253(c)(2). After reviewing the relevant portions of the file relating to this action, and for the reasons set forth in the Report and Recommendation of Magistrate Judge Treece dated June 22, 2007 and the July Order of this Court, the Court finds that Petitioner has failed to make such a showing herein. Therefore, the Court denies Williams’ request for a certificate of appealability.

## **II. *In Forma Pauperis* Application.**

The procedure for a leave to proceed on appeal *in forma pauperis* from the District Court to the Court of Appeals is governed by Rule 24 of the Federal Rules of Appellate Procedure.

Rule 24(a)(3) states in relevant part that:

A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court--before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

Because the Court previously granted petitioner's *in forma pauperis* application (Dkt. No. 5), and has not revoked same, petitioner may proceed on appeal *in forma pauperis* without further authorization from this Court. Accordingly, petitioner’s application (Dkt. No. 71) is

denied as moot.<sup>1</sup>

### **III. Appointment of Counsel.**

Turning to Petitioner's application for appointment of counsel for purposes of his appeal, the Court denies the application without prejudice to Petitioner renewing the request with the Second Circuit.

**WHEREFORE**, it is hereby

**ORDERED**, that Petitioner's application for a certificate of appealability (Dkt. No. 72) is denied for the reasons set forth above, and it is further

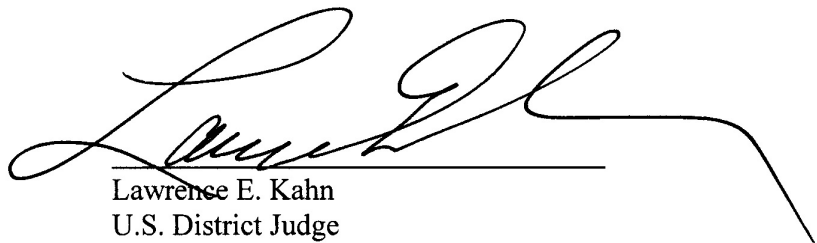
**ORDERED**, that Petitioner's application to proceed *in forma pauperis* (Dkt. No. 71) is denied as moot because, as set forth above, Petitioner already has permission from this Court to proceed *in forma pauperis*, and it is further

**ORDERED**, that Petitioner's request for appointment of counsel on appeal of this matter (Dkt. No. 73) is denied, without prejudice, as set forth above, and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Order upon the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

DATED: September 20, 2007  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge

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<sup>1</sup> Petitioner is advised that neither this ruling nor the prior granting of petitioner's application to proceed *in forma pauperis* in any way prevents the Second Circuit from collecting the fees it is due in light of the Prison Litigation Reform Act.